

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

SENATE BILL

No. 494

Introduced by Senator Escutia

February 20, 2003

~~An act to amend Section 3283 of the Civil Code, relating to arbitration.~~ *An act to amend Section 14124.791 of the Welfare and Institutions Code, relating to Medi-Cal.*

LEGISLATIVE COUNSEL'S DIGEST

SB 494, as amended, Escutia. ~~Arbitration; damages~~ *Medi-Cal.*

Existing law specifies that a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto.

This bill would create specified procedures for the reimbursement of costs if an action or claim is brought against a 3rd party, as specified.

~~Existing law permits damages to be awarded in a judicial proceeding for detriment resulting after the commencement of that proceeding, or certain to result in the future.~~

~~This bill would further permit those damages to be awarded in an arbitration proceeding.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 3283 of the Civil Code is amended to~~
2 ~~read:~~

1 ~~3283. Damages may be awarded, in a judicial or arbitration~~
2 ~~proceeding, for detriment resulting after the commencement of the~~
3 ~~proceeding, or certain to result in the future.~~

4 SECTION 1. *Section 14124.791 of the Welfare and*
5 *Institutions Code is amended to read:*

6 14124.791. (a) *The Legislature finds and declares that the*
7 *cost of health care continues to escalate in California and that*
8 *health care providers are routinely not compensated or are*
9 *undercompensated for the care they provide. The Legislature*
10 *further finds and declares that providers of emergency medical*
11 *care furnish a vital public service of great benefit to all*
12 *Californians by furnishing emergency medical services to all*
13 *without regard to the ability to pay, as required by existing law. The*
14 *Legislature hereby recognizes and declares the long-standing*
15 *public policy of this state for tortfeasors and other responsible*
16 *third parties to bear the burden of paying for the medical care*
17 *resulting from the injuries they cause. It is the intent of the*
18 *Legislature to respond to the invitation of the California Supreme*
19 *Court in Olszewski v. Scripps Health (2003) 30 Cal.4th 798, to*
20 *permit providers to recover their reasonable and necessary*
21 *charges while protecting Medi-Cal beneficiaries' rights to recover*
22 *full damages from responsible third-party tortfeasors, and to*
23 *preclude tortfeasors from receiving the benefit of the Medi-Cal*
24 *program at the expense of providers, beneficiaries, and taxpayers.*

25 (b) Subject to the director's prior right of recovery, a provider
26 who has rendered services to a beneficiary because of an injury for
27 which a third party is *or may be* liable and who has received
28 payment under the Medi-Cal program shall be entitled to ~~file~~ a lien
29 for ~~all fees for the reasonable and necessary charges for services~~
30 provided to the beneficiary against *the portion of* any judgment,
31 award, or settlement *relating to past medical expenses* obtained by
32 the beneficiary or the director against that third party. A provider
33 may ~~only~~ recover upon the lien *only* if the provider has made a full
34 reimbursement of any fees paid by the department for those
35 services.

36 ~~(b)~~

37 (c) If either the beneficiary or the director brings an action or
38 claim against the third party, the party bringing the action shall,
39 within 30 days of bringing the action, give written notice to any
40 provider who is ~~eligible to file~~ *entitled to* a lien under subdivision

1 (a) of, *to the extent known*, ~~the action and of~~ name and address of
2 each third party and the name and address of each insurance
3 carrier that has insured the third party against the liability and, to
4 the extent applicable, the name of the court or state or local agency
5 in which the action or claim is brought. Notice shall be given by
6 personal service or registered mail, and proof of service shall be
7 filed in the action or claim.

8 ~~(c) The provider's claim for reimbursement for fees for~~
9 ~~services rendered to the beneficiary shall be limited to the amount~~
10 ~~of the fees less 25 percent, which represents the provider's~~
11 ~~reasonable share of attorneys' fees for prosecution of the action~~
12 ~~and of the cost of litigation expense.~~

13 (d) *The lien shall become effective when the provider sends a*
14 *written notice containing the name and address of the injured*
15 *person, the name and location of the provider, and the amount*
16 *claimed as reasonable and necessary charges, to the beneficiary*
17 *and the beneficiary's attorney or legal representative, if known.*
18 *The amount claimed in the notice is rebuttably presumed to*
19 *constitute the reasonable value of medical services furnished by*
20 *the provider and that amount, or so much thereof as can be*
21 *satisfied out of 50 percent of the moneys due under any final*
22 *judgment, compromise, or settlement agreement after paying any*
23 *prior liens, shall be deemed to be included within any judgment,*
24 *award, or settlement unless the judgment, award, or settlement*
25 *expressly allocates a lesser amount. Any recovery on the lien shall*
26 *be limited to that portion of the judgment, award, or settlement*
27 *constituting compensation for past medical expenses.*

28 (e) *If a lien has been asserted pursuant to this section, the*
29 *amount paid under the Medi-Cal program shall be inadmissible in*
30 *any action or claim against the third party and the third party may*
31 *not use the amount paid by Medi-Cal to reduce the amount of its*
32 *liability. This provision overturns Hanif v. Housing Authority of*
33 *Yolo County (1988), 200 Cal.App.3d 635, to the extent it is*
34 *inconsistent herewith. This provision is consistent with the law as*
35 *stated in Helfend v. Southern California Rapid Transit District*
36 *(1970), 2 Cal.3d 1.*

37 (f) *If the beneficiary has filed a third-party claim, the court*
38 *where the action was filed shall have jurisdiction over a dispute*
39 *between the provider and the beneficiary regarding the amount of*
40 *a lien asserted pursuant to this section that is based upon an*

1 allocation of damages contained in a settlement or compromise of
2 the third-party claim. If no third-party claim or action has been
3 filed, any superior court in California where venue would have
4 been proper had a claim or action been filed shall have jurisdiction
5 over the motion. The motion may be filed as a special motion and
6 treated as an ordinary law and motion proceeding and subject to
7 regular motion fees. When no action is pending, the person making
8 the motion shall be required to pay a first appearance fee. When
9 an action is pending, the person making the motion shall pay a
10 regular law and motion fee.

11 (g) In any motion filed pursuant to subdivision (f), all of the
12 following shall apply:

13 (1) The provider asserting a lien pursuant to this section and
14 the beneficiary shall be made a party to the motion and either the
15 beneficiary or the provider may file the motion. In cases where the
16 third-party claim was tried to a verdict or judgment, the motion
17 shall be heard by the trial judge, if available. In cases where an
18 action has been filed and settled or otherwise resolved prior to
19 verdict or judgment, the motion shall be heard by the judge to
20 whom the matter was assigned, or, if no judge was assigned or the
21 assigned judge is unavailable, in the regular law and motion
22 department or by a judge assigned to hear the matter. When no
23 action has previously been filed, the motion shall be assigned and
24 heard pursuant to the regular law and motion procedures in the
25 court where the motion is filed.

26 (2) The beneficiary shall produce to the provider a true and
27 correct copy of those portions of the settlement document upon
28 which the asserted allocation is based that are relevant to the
29 determination motion, prior to the filing of the motion.

30 (3) If the beneficiary is the moving party, notice of the motion
31 shall be addressed to the provider at the provider's address as
32 shown on the notice of lien and to any counsel representing the
33 provider on the lien, if known. If the provider is the moving party,
34 notice of the motion shall be addressed to the beneficiary at the
35 beneficiary's last known address and to the beneficiary's counsel,
36 if known. If the beneficiary is not represented by counsel, the notice
37 of motion shall be mailed to the beneficiary by registered mail.
38 Proof of service in compliance with this subdivision shall be filed
39 with the court.

1 (4) *If the beneficiary is represented by counsel, the beneficiary*
2 *shall bear the burden of proof as to the fairness of the allocation*
3 *and the burden of producing evidence, by declaration or other*
4 *written form, as to the manner in which the allocation was made*
5 *and the evidentiary basis for the allocation. If the beneficiary is not*
6 *represented by counsel, the party making the motion shall bear the*
7 *burden of proof as to the fairness of the allocation and the burden*
8 *of producing evidence, by declaration or other written form, as to*
9 *the manner in which the allocation was made and the evidentiary*
10 *basis for the allocation.*

11 (5) *If a settlement has been reached contingent upon the*
12 *amount of a lien asserted pursuant to this section, the settlement*
13 *remains contingent unless the beneficiary accepts the allocation*
14 *made by the court in its decision on the motion.*

15 (6) *The court shall issue its findings, decision, and order, which*
16 *shall be considered the final determination, subject to any appeal,*
17 *of the parties' rights and obligations with respect to the provider's*
18 *lien, unless the beneficiary does not accept the allocation made by*
19 *the court pursuant to paragraph (5).*

20 (h) *No claim authorized by this section shall be permitted to the*
21 *extent that the claim would reduce the director's right to recover*
22 *pursuant to Section 14124.78. However, the provider's*
23 *reimbursement to the department pursuant to subdivision (b) shall*
24 *extinguish the director's claim for the same services.*

25 (i) *Any person, firm, or corporation, including, but not limited*
26 *to, an insurance carrier, who receives notice of a lien asserted*
27 *pursuant to this section and who makes any payment to the injured*
28 *person, or to his or her attorney, heirs, or legal representative, for*
29 *the injuries the beneficiary sustained, after receipt of this notice,*
30 *without paying to the provider the amount the provider is entitled*
31 *to receive as payment on its lien, shall be liable to the provider for*
32 *that amount.*

33 (j) *For purposes of this section, "reasonable and necessary*
34 *charges" means the usual, customary, and reasonable charges for*
35 *medical services in the geographic region where the services were*
36 *provided, when these services were medically necessary to treat the*
37 *injuries allegedly caused by a third-party tortfeasor. The amount*
38 *paid to the provider by Medi-Cal shall not be considered in the*
39 *determination of the amount of a provider's lien or in the*

1 *determination of the amount of the third-party tortfeasor's liability*
2 *to the beneficiary.*

3 *(k) When a final judgment in the third-party claim includes a*
4 *special finding by a judge, jury, or arbitrator that the beneficiary*
5 *was partially at fault, the provider's lien shall be reduced by the*
6 *same comparative fault percentage by which the beneficiary's*
7 *recovery was reduced.*

8 *(l) At the request of the beneficiary, the court or arbitrator in*
9 *the third-party claim shall provide for special findings with respect*
10 *to past medical expenses.*

11 *(m) The provider's lien shall be reduced by the pro rata amount*
12 *commensurate with the beneficiary's reasonable attorney's fees*
13 *and costs in accordance with the common fund doctrine.*

14 *(n) The amount claimed by the beneficiary, or his or her heirs*
15 *or personal representative in case of his or her death, as the*
16 *provider's reasonable and necessary charges in securing a*
17 *judgment, settlement, award, or compromise in the third-party*
18 *claim, shall preclude the beneficiary, or his or her heirs or*
19 *personal representative in case of his or her death, from*
20 *challenging the reasonableness and necessity of those charges in*
21 *any dispute between the provider and the beneficiary regarding the*
22 *lien, unless a lesser amount has been specifically allocated in a*
23 *judgment, settlement, award, or compromise.*

24 *(o) If any provision of this section, or the application of any*
25 *provision of this section to any person, firm, corporation, or other*
26 *entity or to any circumstance or situation, shall be held invalid, the*
27 *remaining provisions of this section shall not be affected thereby,*
28 *and shall be given effect.*

